

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 208 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BABLU @ HUSEN GULAM MOHMAD

Versus

G S RAO, DY POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 208 of 1999
MS NAYANA V PANCHAL for Petitioner
MR. H.H. PATEL, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/12/1999

ORAL JUDGEMENT

Rule. Mr. H.H. Patel, learned APP, waives service of rule.

1.1 The present petitioner came to be externed by virtue of an order passed by the Deputy Commissioner of Police, Surat City, Surat, on 21.12.1998 in exercise of powers under Section 56 A and B of the Bombay Police Act,

1955.

2. Prior to passing the above order, a notice under Section 59 of the Bombay Police Act was given to the petitioner on 24.2.1998. The allegation contained therein are that an offence is registered against the petitioner with Umra Police Station vide C.R. No. I 574 of 1997 under Sections 224, 212, 120B, 34 and 109 of the I.P.C. The incidents dated 18.2.1998, 18.10.1997 and 20.10.1997 narrated by anonymous were indicated in the notice. The Externing Authority stated that it is satisfied that the petitioner is a head-strong person and the witnesses are not prepared to give evidence in public because of fear of the petitioner. It was therefore felt necessary that the petitioner is required to be externed for a period of two years from the territories of Surat City so also from the territories of adjoining districts i.e. Surat Rural District, Bharuch, Navsari and Valsad Districts, so that the petitioner may not continue his activities by staying in these adjoining districts. The petitioner was called upon to show cause why he should not be externed as proposed and for that he was personally called upon to appear on 5.3.1998 at 11.00 a.m.

2.1 After the above notice, an order came to be passed by the externing authority on 21.12.1998 which is subject matter of challenge in this petition under Article 226 of the Constitution of India.

3. The petitioner challenges the externment order mainly on two grounds. The first ground is that there is a gross delay in passing the orders. The second ground is that there is non-application of mind which is reflected both in the notice and in the order when the authority says that the offence registered against the petitioner falls under Chapter XVI and XVII of the I.P.C. as required under the provisions of Section 56 of the Bombay Police Act. In fact, the offence would not fall either under Chapter XVI or XVII of the IPC and therefore there is non-application of mind which would vitiate the order of externment.

4. An affidavit in reply is filed on behalf of respondent No. 1 by one Mr. I.M. Desai, Deputy Commissioner of Police, Surat City.

5. Mr. N.S. Desai, learned advocate for Ms. Nayna V. Panchal appearing for the petitioner has restricted his arguments to these two grounds. He submitted that notice was issued on 21.2.1998. Notice was reply to by

the petitioner on 21.7.1998 and the order came to be passed on 21.12.1998. He submitted that there is gross delay of about 10 months between the date of issue of notice and the date of the order and there is a delay of about 5 months between the date of reply and the date of the order. He submitted that, in any case, there is a gross delay which is not explained by the other side.

5.1 He took this court through the show cause notice as well as the order of externment. He has drawn attention of this court that the externing authority has categorically stated that the offence registered against the petitioner falls within Chapter XVI and XVII of the I.P.C. In fact, the offence registered is under Sections 224, 212, 120B, 34 and 109 of IPC which would not fall either under Chapter XVI or XVII of IPC. He submitted that this reflects non-application of mind on the part of the externing authority. In support of his arguments he has placed reliance on the decision of this court in the case of Rajput Karansinh Gagji Vs. Sub-Divisional Magistrate, Bhavnagar & Another. reported in 1988(2) GLH 262. Mr. Desai therefore submitted that the petition may be allowed and the order of externment may be set aside.

6. Mr. H.H. Patel appearing for the respondents was not able to specifically state as to whether any of the respondents has filed any affidavit in reply. He has chosen to reply only to the question of delay and could not specifically say as to how the delay can be or is explained in the present case. He has not stated anything regarding the argument on behalf of the petitioner in respect of non-application of mind.

7. Adverting to the rival side contentions and the first contention regarding delay, prima facie there appears to be a delay in passing the order of externment, if we consider the date of notice and the date of order i.e. 24.2.1998 and 21.12.1998. However, the petitioner tendered his reply on 21.7.1998 as per the say of Mr. Desai. However, if the show cause notice is seen, the petitioner was called upon to appear and show cause against the proposed action on 5.3.1998.

7.1 On this factual aspect, if the affidavit in reply filed on behalf of the respondent No. 1 is seen, in para 5 of the affidavit, it is stated that the externment proceedings were completed on 21.7.1998 and the petitioner had submitted his final defence. The papers were received from the Assistant Commissioner of Police for final order on 2.11.1998. Thereafter, on request for

getting defence on 17.11.1998 and 23.11.1998 adjournments were granted. During the interval also the petitioner delayed the externment proceedings by remaining absent. At last the externment order could be passed on 21.12.1998.

7.2 The outcome of the above discussion is that notice was dated on 21.2.1998 by which the petitioner was called upon to show cause against the proposed action of externment on 5.3.1998. Thereafter, proceedings were continued and the externment proceedings were over on 21.7.1998. The Deputy Commissioner of Police received papers from the Assistant Commissioner of Police on 2.11.1998 i.e. almost after 2 1/2 months. Thereafter also, after a lapse of about 1 1/2 months, externment order was passed. Two dates are given by the externing authority on which adjournments were granted namely 17.11.1998 and 23.11.1998. An attempt is made by vaguely stating that thereafter also the petitioner delayed the externment proceedings by remaining absent. The authority could have given dates in the affidavit in reply just as it has given the dates of 17.11.1998 and 23.11.1998 and should have explained why there was delay in passing the order and on what dates the petitioner did not remain present.

7.3 What transpires, therefore, is that, there was a delay between 21.7.1998 and 2.11.1998 in sending the papers for final order by the Assistant Commissioner of Police to the Deputy Commissioner of Police. There is a delay between 23.7.1998 and 21.12.1998 when adjournments were granted to the petitioner and the order was passed. Bald statement unsupported by any details that after 23.11.1998 also the petitioner delayed externment proceedings by remaining absent is difficult to be accepted. The externment proceedings are provided for immediate action and immediate results. This drastic remedy could not have been resorted to by the externing authority by such delayed action.

8. Now coming to the second contention regarding non-application of mind, it is also apparent from the notice as well as the order of externment that according to the externing authority the offence registered against the petitioner with Umra Police Station fell under Chapter XVI and XVII of IPC. The sections on which the petitioner is charged with are Sections 224, 212, 120B, 34 and 109 of IPC. The offence would not fall under Chapter XII also. This reflects that the externing authority has taken into consideration an irrelevant factor namely the offence registered with the Umra Police

Station and has arrived at subjective satisfaction for the need for externment the petitioner. The order therefore would stand vitiated. In the case of Rajput Karansinh Gagji Vs. Sub-Divisional Magistrate, Bhavnagar and Another reported in 1988(2) GLH 262 a Division Bench of this Court was required to consider similar question. In that case show cause notice and the order of externment referred to commission of an offence falling under Chapter XVI and XVII of the IPC. Like in this case there was no material to that effect available on record and the Division Bench held that order of externment suffered from non application of mind and ultimately quashed the order. Present case is therefore squarely covered by that decision. The principle laid down therein would apply to the present case and the petition therefore will have to be allowed on this ground alone.

9. In view of the above discussion, the petition deserves to be allowed on both the grounds, namely, delay in passing the order as well as non-application of mind. The petition is therefore allowed. The order of externment is set aside forthwith. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

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